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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,975	12/21/2004	Timothy Ian Moore		2906
23617	7590	06/28/2007		
JOHN V STEWART 1308 HENRY BALCH DRIVE ORLANDO, FL 32810			EXAMINER PHAM, HUONG Q	
			ART UNIT 3772	PAPER NUMBER
			MAIL DATE 06/28/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/518,975

Applicant(s)

MOORE, TIMOTHY IAN

Examiner

Huong Q. Pham

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3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 4/13/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 9-19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-19, 21-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-6, 11-13, 17, 19, 21 are rejected under 35 U.S.C. 102(b) as being anticipated by McEwen ( 332,728).

McEwen teaches the structure recited in the claims including a shell E for an ankle brace , the shell being semi-rigid ( note that “semi-rigid” is a relative term) and having an inner surface shaped capable of being conform to a side surface of a person's leg between an upper extent above the person's ankle bone and a lower extent below the person's ankle bone but above the base of the heel , and between a forward extent towards the front of the person's leg and a rearward extent towards the rear of the person's leg, the shell having a “registration portion” shaped and having capability to register the shell “ in the direction of four extents “ with respect to the person's ankle bone, and the shell being bifurcated by a slot extending from the upper extent towards a registration portion. As for claim 4, note that the registration portion is provided by a hole capable of snugly receiving the protruding part of the ankle bone ( note that the size of the ankle bone can vary between different

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person). As for claim 5, note that the slot opens into the hole. As for claim 6, note that the slot stops short of the hole. As for claim 11, note that the registration portion shown in figure 2 has a portion which is a non-circular outline. As for claim 12, note that the shell has a generally uniform thickness. As for claim 13, note the adjustably strapping means A (figure 2). As for claim 19, note figures 1, 2.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3, 7, 9-10, 15- 16, 18, 22 are rejected under 35 U.S.C. 103(a) as being obvious over McEwen ( 332,728).

While McEwen does not mention the dimensions of the slot, note that the width of the slot above the registration portion is approximately about at least 5 mm and is approximately about at most 30 mm. Note that the provision for the dimension of the slot is well within the realm of one ordinary skill in the art, and does not provide any unobvious result, and therefore is not patentable over prior art.

As for claim 7, note that the ribs E are made of material and having portion(s) which is capable of being conformed to the protruding part of the ankle bone, and therefore forming the registration portion with a recess in the inner surface of the

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shell for receiving and covering the protruding part of the ankle bone ( note that the size of the ankle bone can vary between different person). As for claims 16, 22, note that the projecting region projects by approximately a maximum distance of about 60 mm + 10 mm from the tip of the person's ankle bone . The provision for the dimension of the projecting region is well within the realm of one ordinary skill in the art. As for claim 18, note that the provision for the recited adjustable strap in order to adjust the length of the strap to fit a person is well-known in the art( for example, note Us patent 660,885).

Claims 1-7, 9- 19, 21 -22 are rejected under 35 U.S.C. 103(a) as being obvious over Wilkerson ( 4,590,932) in view of Nelson ( 4,527,556).

Wilkerson teaches the structure recited in the claims including an ankle support 14 ( figure 1) for an ankle brace , having an inner surface shaped capable of being conform to a side surface of a person's leg between an upper extent above the person's ankle bone and a lower extent below the person's ankle bone but above the base of the heel , and between a forward extent towards the front of the person's leg and a rearward extent towards the rear of the person's leg, the support having a "registration portion" shaped and having capability to register the support " in the direction of four extents " with respect to the person's ankle bone, and the support being bifurcated by a slot extending from the upper extent towards a registration portion ( notes figure 1 of Wilkerson).

Nelson teaches ankle support /shell made of semi-rigid material.

In view of the teaching Nelson, it would have been obvious to one ordinary skill in the art at the time the invention was made to make the ankle support of Wilkerson with semi-rigid material in order to provide a desired level of support for a wearer. The substitution of one material for another well-known material in the art, in order to provide the desired level of support, is well within the realm of one ordinary skill in the art, and does not provide any unobvious result, and therefore is not patentable over prior art.

As for claims 2,3, while Wilkerson does not mention the dimensions of the slot, note that the width of the slot above the registration portion is approximately about at least 5 mm and is approximately about at most 30 mm. Note that the provision for the dimension of the slot is well within the realm of one ordinary skill in the art, and does not provide any unobvious result, and therefore is not patentable over prior art.

As for claim 4, note that the registration portion of Wilkerson is provided by a hole capable of snugly receiving the protruding part of the ankle bone ( note that the size of the ankle bone can vary between different person) . As for claim 5, note in figure 1 that the slot opens into the hole. As for claim 6, note that the slot stops short of the hole. As for claim 7, note that the materials made of the ankle support Wilkerson, Neal, and Nelson are capable of being conformed to the protruding part of the ankle bone, and therefore forming the registration portion with a recess in the inner surface of the shell for receiving and covering the protruding part of the ankle bone ( note that the size of the ankle bone can vary between different person. ). As for claim 11, note that the registration portion shown in figure 1 has a portion which is a non-circular outline. As for claim 12, note that the ankle supports of the patents mentioned above

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each has a generally uniform thickness. As for claim 13, note the adjustably strapping means of Wilkerson( figures 11,12). As for claims 15,19, note figure 7 of Wilkerson. As for claims 16, 22, figures 1, 3, 4 of Wilkerson show that the projecting region projects by a maximum distance of approximately about 60 mm + 10 mm from the tip of the person's ankle bone . The provision for the dimension of the projecting region is well within the realm of one ordinary skill in the art.

The patent to Neal ( 5,000,195) is cited to show the ankle support with the shape and slot as recited ( figure 1). The patent to Brauer is cited to show the adjustable strap to adjust the length.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huong Q. Pham whose telephone number is (571) 272-4980. The examiner can normally be reached on 8:45 AM - 5:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on ( 571) 272 - 4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

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Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

June 21, 2007

  
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6/23/07